STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 5, 2014
v	No. 315772 Wayne Circuit Court
DOMINIC MARCELLUS GLASTER, Defendant-Appellant.	LC No. 12-010576-FH

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals his bench trial conviction of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, possession of a firearm during the commission of a felony, MCL 750.227b, and possession of marijuana, MCL 333.7403(2)(d). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Two Detroit police officers found defendant and a companion smoking marijuana in a parked car on a residential driveway. After defendant and his friend got out of the car, one officer performed an inventory search of the vehicle because he planned to impound it. During the search, the officer found a loaded revolver under the driver's seat.

Defendant elected to have a bench trial, and the court convicted him of violating MCL 750.224f, 750.227, 750.227b, and 333.7403(2)(d). On appeal, defendant claims that: (1) the search of the car violated his Fourth Amendment rights; and (2) he received ineffective assistance of counsel.

II. ANALYSIS

A. FOURTH AMENDMENT CLAIM

A motion to suppress evidence must be made prior to trial or, with the trial court's discretion, at trial. *People v Carroll*, 396 Mich 408, 412; 240 NW2d 722 (1976). Defendant failed to make a motion to suppress evidence before the trial court, and his argument on suppression of the evidence is unpreserved.

Unpreserved claims are reviewed for plain error. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* at 763. Whether a plain error affected substantial rights requires a showing of prejudice; the error must have affected the outcome of the proceedings. *Id.* A defendant bears the burden of persuasion with respect to prejudice. *Id.* If a defendant satisfies all three requirements, the appellate court must exercise its discretion in deciding whether to reverse the result of the lower court proceedings. *Id.* Reversal is warranted when the plain error resulted in the conviction of an actually innocent defendant, or when the error "seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 763–764.

"The constitutionality of any search and seizure conducted by the police depends on an analysis of the Fourth Amendment of the United States Constitution and art. 1, § 11 of the Michigan Constitution of 1963." *People v Toohey*, 438 Mich 265, 270; 475 NW2d 16 (1991). Generally, a search warrant, supported by probable cause, is necessary for any evidence discovered in a police search to be admissible at trial. *Id.* But there are numerous exceptions to this requirement. An automobile may be searched by police officers, without a search warrant, if there is probable cause to support the search. *People v Kazmierczak*, 461 Mich 411, 418–419; 605 NW2d 667 (2000). "[T]he automobile exception is premised on an automobile's ready mobility and pervasive regulation, and if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." *Id.* at 418.

Here, defendant wrongly claims that the inventory search violated his Fourth Amendment rights, and that the firearm and other evidence gleaned from the search should be suppressed. The officers were entitled to search his car under the automobile exception.[1] They approached defendant's vehicle, smelled marijuana, observed what appeared to be a marijuana cigar in defendant's hand, and defendant admitted there was marijuana in the vehicle—more than probable cause to search the vehicle.

Defendant's argument that the officers violated Detroit Police Department policy misses the point. Under relevant Detroit ordinances,[2] police may impound a vehicle "[w]hen the driver

[1] Of course, the police also could have searched the vehicle without a search warrant as a search incident to arrest. A vehicle search by police officers is permissible if, after a person has been arrested, it is reasonable to believe that evidence relevant to the crime for which the person was arrested might be found in the vehicle. *People v Short*, 289 Mich App 538, 543; 797 NW2d 665 (2010), citing *Arizona v Gant*, 556 US 332, 343; 129 S Ct 1710; 173 L Ed 2d 485 (2009). As noted, at the time of defendant's arrest, there was significant evidence of his marijuana possession within the vehicle. Accordingly, the officers had the authority to search the vehicle as a search incident to arrest.

[2] Detroit city ordinances and Detroit Police Department policies and procedures regarding the impoundment of vehicles were not discussed at trial, nor were they included in the lower court file. Generally, our Court may review only the evidence included as part of the lower court

of such vehicle is taken into custody by the police department and such vehicle would thereby be left unattended upon the street." Detroit Ordinances, § 55-14-9.[3] The police officer who arrested defendant followed departmental procedure when he decided to impound the vehicle: defendant and his companion were under arrest, and, absent impoundment, the car would have been left unattended in an unknown resident's driveway.[4] Accordingly, the impoundment and inventory of the vehicle was constitutional.[5]

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio

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record. See *People v Shively*, 230 Mich App 626, 628 n 1; 584 NW2d 740 (1998). However, we have the discretion to take judicial notice of city ordinances throughout Michigan pursuant to MRE 202(a). See *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 723 n 1; 605 NW2d 18 (1999).

[3] In his brief of appeal, defendant attached a two-page document purporting to be excerpted sections of the "Detroit Police Web Manual v2," including a date of January 25, 2008. Again, this document was not part of the trial court record. Accordingly, we may not consider the document, which defendant introduces for the first time on appeal. *Shively*, 230 Mich App at 628 n 1.

[4] As noted, the car was parked on a residential driveway, not a city street, but the police acted reasonably when they decided to impound the car instead of leaving it on an unknown resident's private property—where it would have become an unattended nuisance.

[5] Defendant inaccurately claims that his counsel provided him ineffective assistance because the attorney did not object to admission of the firearm as evidence. As noted, the firearm would have been admitted under multiple exceptions to the Fourth Amendment's search-warrant requirement. Objecting to its admission would have been meritless, and trial counsel properly did not make such an objection.